IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISIDICTION

(1)CONTEMPT PETITION NO. 9 OF 2003

Shri.Subhash Baborao Kapse
and others ...Petitioners

Vs.

Shri.C.P.Devshi alias
Chhakkalmatlu Devsi Pourlus
and others ...Respondents

....

Mr.K.D.Patil for P.N.Joshi for Petitioners
Mr.C.G.Gavnekar with Ms.Deepa Sawant for respondent no.1.

....

WITH

(2) CONTEMPET PETITION NO. 13 OF 2003

Shri.Subhash Baborao Kapse ...Petitioner

Vs.

Shri.Ratilal Shankar Rawal
and Ors. ...Respondents

...

Mr.K.D.Patil with P.N.Joshi for Petitioner
Mr.C.G.Gavnekar for Ms. Deepa Sawant for Respondents.

...

CORAM : B.H.MARLAPALLE,J.

DATE : JANUARY 27,2005

P.C.:

1. Both these petitions can be disposed of by a common order as they arise from a similar undertaking submitted before this Court in Second Appeal under Stamp No.30985 of 2000. As per the said undertaking the appellants/tenants were required to hand over the

possession of the suit premises to the plaintiff i.e. the present petitioners for 31st December, 2001. As per the petitioners, the said possession was not handed over and therefore, these contempt petitions have been moved sometimes in December, 2002.

2. In both these petitions, respective respondents have filed affidavit in reply and stated on oath that the possession of the suit premises in terms of the Undertaking furnished before this Court in the Second Appeal was handed over by 31st December, 2001. It is contended by the learned counsel for the petitioners that the suit premises have not been handed over and reliance in this regard has been placed on the Commissioner's report in Regular Darkhast Nos.94 and 95 of 1996. On the basis of these disputed questions of facts, the respondent cannot be hauled up for contempt and the petitioners will have to proceed in the pending execution proceedings.

3. Contempt petitions therefore, fail and the same are hereby rejected.

[B.H.MARLAPALLE,J.]